

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CHAPTER 7
)	
JAMIE E. A. FLEMING AND)	CASE NO. 07-62511
BENJAMIN L. FLEMING,)	
)	JUDGE RUSS KENDIG
Debtors.)	
)	
)	MEMORANDUM OF OPINION
)	(NOT INTENDED FOR
)	PUBLICATION)

This matter is before the court on Debtors' Application to Proceed *In Forma Pauperis* (hereafter "application") filed on August 24, 2007. On August 29, 2007, the court entered an order requesting additional documentation from Debtors to assist the court in assessing Debtors' current financial condition. Debtors filed the requested documents on September 19, 2007.

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." By the terms of the statute, a court's ability to waive the fee is permissive, not mandatory ("may waive"), and is premised upon a finding that a debtor meets the income and inability to pay in installments criteria.

The court will first determine whether Debtors' income is 150 percent of the poverty level. According to the Department of Health and Human Services 2007 Poverty Level Guidelines, available at <http://aspe.hhs.gov/poverty/07poverty.shtml>, the poverty income for a family of five is \$24,130.00. At 150 percent of poverty, the poverty income for this family is \$36,195.00 annually, or \$3,016.25 per month.

Form B22A (the "means test") indicates Debtors' Annualized Current Monthly Income is \$9,648.00 which is based on a monthly income of \$804.00 from Debtor Jamie E.A. Fleming's employment. Debtor's current paystubs support this figure. Schedule I indicates that Debtors' monthly net income is \$1,295.00 per month, which represents net monthly earnings plus \$541.00 in food stamps. Their 2006 income tax return indicates debtors' adjusted gross monthly income in 2006 was \$14,609.00. Clearly, the figures

indicate that Debtors earn less than 150% of the poverty threshold and therefore Debtors have satisfied the first prong of the test.

Next, the court must determine if Debtors have the ability to pay the filing fee in installments. Upon review of Debtors' Schedule J, the court concludes that Debtors are not able to pay the filing fee in installments. Debtors' modest budget results in a monthly shortfall of \$160.00. Thus, the court finds that Debtors do not have the ability to pay the filing fee in installments and they have satisfied the second prong of the test.

Wherefore, in light of the above, the Court hereby **GRANTS** Debtors' application to waive the filing fee.

An order in accordance with this decision shall be issued immediately.

OCT 09 2007

/s/ Russ Kendig

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

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